IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 850 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PAVANKUMAR SHIVKUMAR - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MAHENDRA K PATEL for Applicant(s) : 1,
MR ND GOHIL, APP for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 22/08/2005

ORAL JUDGMENT

1.Rule. Mr.Gohil, learned APP waives service of Rule for the respondents. With the consent of the parties, the matter is taken up for hearing today.

2.The petitioner has approached this Court for challenging the order passed by the learned Magistrate

and its confirmation thereof by the learned Sessions Judge, whereby the custody of Jaggery is declined to the petitioner.

3. Heard Mr.Patel, learned Counsel for the petitioner and Mr.Gohil, learned APP for the State. It appears that there is no dispute on the point that the present case is covered by the decision of this Court (Coram: S.D.Dave, J.) dated 7.5.2004 passed in Special Criminal Application No.410 of 2004, whereby the custody was handed over of the jaggery on condition that the goods are exported outside the territory of the Gujarat State and the undertaking that the petitioner shall not store or use or consume the said muddamal within the territory of Gujarat State.

4. If the facts of the present case are considered, there is no dispute on the factual aspects that the jaggery was seized in connection with the complaint vide C.R. No.III/229/2005 of Godhra Prohibition Police and it is the case of the petitioner that the goods were to be transported outside the territory of Gujarat. It is also the case of the petitioner that the petitioner is the owner of the muddamal and, therefore, the claim was made for entrusting custody of muddamal. There is no dispute on the point that the item of muddamal is perishable commodity and if the same is not entrusted,

it will get perished day by day. The petitioner approached the learned Magistrate for entrusting the custody under Section 451 of Cr. P.C., which is declined by the learned Magistrate as per the order dated 19.4.2005. The matter was carried before the learned Sessions Judge by the petitioner by preferring Criminal Revision Application No.27/2005 and the said revision is also dismissed and, therefore, this petition.

5. In the above referred decision of this Court in Special Criminal Application No.410/2004, after taking into consideration the provisions of Section 451 of Cr.P.C., it was observed as under:

> “In the present case admittedly, muddamal is a jaggery, which is lying in the police station in open to sky condition and if the proper care is not taken to preserve it, there are all chances that due to heat the muddamal – jaggery will melt and it will reduce into water. In that view of the matter and in view of the fact that there is no material or evidence to show that the muddamal is to be used for the purpose of manufacturing the country made liquor within the State of Gujarat, this application is required to be allowed and is accordingly allowed.”

6. Same is the situation in the present case and the present petition also deserves to be allowed on the very ground. Hence, the impugned order passed by the learned Magistrate and its confirmation thereof by the learned Sessions Judge are quashed and set aside. It is directed that the custody of muddamal seized in connection with C.R. No.III/229/2005 of Godhra Prohibition Police Station be handed over to the petitioner on furnishing an undertaking to the satisfaction of the learned Magistrate concerned, that the petitioner shall not store or use the said muddamal – Gur within the territory of Gujarat State and the same shall be taken to its destination outside the limits of Gujarat State. The said muddamal – Jaggery – Gur shall be carried under the police escort to be given by the police at the cost of the petitioner.

7. The petition is allowed to the aforesaid extent. Rule made absolute accordingly.

22.8.2005 **(Jayant Patel, J.)**

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